

FILED

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PUBLIC UTILITIES  
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	Docket No. 2008-0303
HAWAIIAN ELECTRIC COMPANY, INC.	)	
HAWAII ELECTRIC LIGHT COMPANY, INC.	)	
MAUI ELECTRIC COMPANY, LIMITED	)	
	)	
For Approval of the Advanced Meter Infrastructure	)	
(AMI) Project and Request to Commit	)	
Capital Funds, to Defer and Amortize	)	
Software Development Costs, to Begin	)	
Installation of Meters and Implement Time-Of-Use	)	
Rates, for Approval of Accounting and Ratemaking	)	
<u>Treatment and other matters.</u>	)	

LIFE OF THE LAND'S

MOTION TO INTERVENE

&

CERTIFICATE OF SERVICE

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Aloha Commissioners

The Puka

Historically utilities such as Hawaiian Electric Company (HECO) present their short-range (5 year) and long-range (20 year) plans in a Public Utilities Commission (PUC) Integrated Resource Planning (IRP) docket. However, HECO and the State signed off on the Hawaii Clean Energy Initiative (HCEI) Agreement (October 2008) which has not been vetted in any planning proceeding, and which has many moving parts. As a result of the agreement between HECO and the State, the IRP process for HECO, MECO and HELCO has ended. Its replacement is the Clean Energy Scenario Planning (CESP), a largely unknown process that will undergo its first pre-docket step with the creation of a proposed Framework to be filed with the Commission on March 31, 2009. Thus we are currently in a post-IRP pre-CESP time period where there has been no vetting of issues and policies.

During the in-between time, HECO is opening up numerous dockets that promote transformational proposals on a broad scale that will fundamentally change the way numerous issues are handled, including utility rates, utility profits, renewable energy tariffs and penetration levels, energy efficiency, load management, and the establishment of smart grids.

These new programs will use valuable resources (money, regulatory time) that could be used to go to support other alternatives. The new programs and policies will lock the utilities and the regulatory agencies into a new system that will likely last for decades.

HECO wants to fast-track the whole process, and apparently to reverse recent Commission rulings on Distributed Generation, Energy Efficiency, Competitive Bidding and Inter-Governmental Wheeling.

Life of the Land supports some proposals, oppose others, and have not determined positions on still others.

We firmly believe that these dockets should proceed at a pace whereby due process, democracy and transparency are preserved, where unintended negative impacts are minimized, and where the regulatory process is deliberative, reasonable, in the public interest.

Or, as Rob Parsons stated in the Solar Flair (Maui Times, January 15, 2009): "Converting HECO's, MECO's and HELCO's current systems to a "smart grid" capable of saving both energy and costs will be instrumental to meeting Hawaii's ambitious energy goals. In our rush to offset our overwhelming dependence on imported petroleum and other fuel sources, we will be wise not to proceed so hastily that we later look back and regret our choices."

[http://www.maui-time.com/Articles-i-2009-01-15-68457.113117\\_Solar\\_flair.html](http://www.maui-time.com/Articles-i-2009-01-15-68457.113117_Solar_flair.html)

## Background

The utility proposal has implementation costs of \$97M, including \$64M (HECO: \$41M; MECO \$10M; HELCO \$13M) for the installation of Advanced Metering Infrastructure ("AMI") to install a total of 451,000 meters: (HECO: 293,000 MECO: 66,000 HELCO: 92,000) but none for Moloka'i or Lana'i. The proposal calls for the installation of a Meter Data Management System ("MDMS") and for immediate approval to begin installing, on a first-come, first-served basis, advanced meters for all customers that request them and to implement time-of-use ("TOU") rates on an interim basis for customers requesting the installation of advanced meters; for expedited approval of proposed Schedule TOU-R (Residential

Time-of-Use), Schedule TOU-G (Small Commercial Time-of-Use Service), Schedule TOU-J (Commercial Time-of-Use Service) and Schedule TOU-P (Large Power Time-of-Use Service); and for approval of the HECO-Sensus Agreement.

#### Life of the Land's Position

In general, we support Smart Grids and Time of Use Rates. However we recognize that the proof is in the pudding, the devil is in the details, and a lot can go wrong. The economy, the environment and the climate hang in the balance.

"The reliability of the grid is paramount." (Life of the Land's Initial Submission, dated March 29, 1997 in Docket 96-0493 re Instituting a Proceeding on Electric Competition, Including an Investigation of the Electric Utility infrastructure in the State of Hawai'i.)

Grid issues were discussed in HECO IRP-1. Unfortunately HECO chose to remove this discussion in subsequent IRP dockets.

#### Intervention

Hawaii Administrative Rules ("HAR") §6-61-55 Intervention. (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

A person may make an application to intervene as per HAR §6-61-55(a). Life of the Land ("LOL") is a person as defined by HAR §6-61-2. LOL will be represented by LOL's Vice President for Consumer Affairs, Henry Curtis, in accordance with HAR §6-61-12.

Timeliness. Our motion to intervene is timely. The Public Utilities Commission ("Commission") opened three dockets dealing with biofuels on December 31, 2008. Our Motion to Intervene was filed on January 14, 2009, which is within 20 days after the Application was filed.

#### **2) The nature of the applicant's statutory or other right to participate in the hearing.**

We recognize that the Commission has the discretion to determine whether we are permitted to intervene in this docket.

#### A ) Hawai'i State Constitution Article IX.

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

The LOL's Petition and Charter of Incorporation (December 16, 1970) states: "The organization is organized ... [to] intervene in legal matters as may be appropriate to ... conserve resources, preserve or restore natural beauty or correct environmental abuse." The LOL Board of Directors adopted Energy Policy Goals and Objectives (July 13, 1981). "Goal: To meet the State's energy needs through conservation and low-cost, non-polluting resources." LOL's Board of Directors is authorized to act on behalf of its members. On Friday, September 22, 2000, the LOL Board of Directors approved continuing to intervene in energy dockets as a means of promoting sustainable policies. Henry Curtis, Vice-President for Consumer Affairs, is authorized by the LOL Board of Directors to represent LOL before the PUC in accordance with HRS Section 6-61-12.

Life of the Land (LOL) is a 39-year old non-profit organization. We filed our first Motion to Intervene ("MTI") before the Hawaii Public Utilities Commission ("Commission") re the Hawaiian Electric Company ("HECO") 1971 rate case and won the appeal before the Hawaii Supreme Court. In the past 13 years we have been a party in 19 energy regulatory proceedings involving the Commission, the Hawaii Board of Land and Natural Resources ("BLNR") and the Federal Energy Regulatory Commission ("FERC").

Life of the Land has directed and produced several shows for public television including the University of Hawaii Richardson School of Law's Climate Teach-in, a talk by Stanford University climate Nobelaureate Dr. Stephen Schneider sponsored by Hawaii Pacific University, the Kick-off meeting of Hawai'i Power and Light (a religious response to climate change), and the Commission Evidentiary Hearing on HECO's biofuel contract. Life of the Land directs and produces a weekly public television series: Energy and Power in Hawaii.

**3) The nature and extent of the applicant's property, financial, and other interest in the pending matter;**

LOL is a non-profit Hawaii-based organization. Our members live, work and recreate in Hawaii. Life of the Land is concerned with many issues including those related to the environment, climate, justice, equity, and life cycle impacts.

This docket deals with fundamentally altering the grid to allow for greater flexibility in load management, grid stability and renewable energy penetration. The use of Time of Use rates offers the opportunity to decrease peak loads and to eliminate the need for peaking units. It is in the utility's interest not to allow for the displacement of existing and planned peaking units. greater levels of renewable energy onto the grid. testing palm oil at a utility generator.

Hawaiian Electric Company has misconstrued our position in previous dockets. When we have filed Motions to Intervene stating that we have one or two concerns, they have sought to pigeon-hole our concerns to just those issues. When we have filed Motions to Intervene stating that we have a holistic rather than narrow world view they have opposed us on the grounds that we are seeking to improperly broaden dockets or delay proceedings. In reality, we have never initiated any attempt to broaden dockets or delay proceedings, however, we have sometimes gone along with proposals by HECO to do both. Our listing of the broad issues is meant to show that we look at the big picture, and many of HECO's filings involve an array of issues which are of concern to us.

Life of the Land's holistic view is not limited to what many believe is the realm of traditional environmentalism: the birds and the bees, land use and toxic pollution. Rather, Life of the Land's holistic

approach includes: (a) Transparency/Sunshine; (b) Life Cycle Social Impacts; (c) Life Cycle Environmental Impacts; and (d) Life Cycle Financial Impacts

(a) Transparency/Sunshine: The process must be open and understandable. Documents must be easily accessible, and downloadable from the web. Public input must be accepted. This includes meaningful public hearings and permitted interventions in regulatory proceedings. Environmental impact statements should be written when there are significant impacts, and they should include cumulative impacts and alternatives. Closed-door secret meetings where policy is decided is the wrong way to bring about change. *The ends do not justify the means.*

(b) Life Cycle Social Impacts: Solutions must be People Friendly. There must be respect for individuals, groups and communities, workers, children, women and minorities. Labor should work in a safe environmental and have the right to organize. The use of sweat shops, slave labor and union busting techniques is not acceptable. Community impacts are important in Hawai'i and also from where the feedstock is imported from.

(c) Life Cycle Environmental Impacts: Projects must promote biodiversity, and minimize climate impacts. Energy Injustice must be accounted for: the building of projects with significant environmental impacts should not be dumped in poor minority communities. Environmental impacts are important in Hawai'i, and also from where the feedstock is imported from and where the waste products are disposed. Projects must take into account the Public Trust Doctrine and the Precautionary Principle.

Public Trust Doctrine: "Most importantly, the people of this state have elevated the public trust doctrine to the level of a constitutional mandate." (Hawaii Supreme Court: In re Water Use Permit Applications 94 Haw. 97 (2000) p. 131)

Precautionary Principle: "[T]he precautionary principle simply restates the Commission's duties under the constitution and Code. Indeed, the lack of full scientific certainty does not extinguish the presumption in favor of public trust purposes or vitiate the Commission's affirmative duty to protect such purposes wherever feasible. ... In furtherance of its trust obligations, the Commission may make reasonable precautionary presumptions or allowances in the public interest. The Commission may still act when public benefits and risks are not capable of exact quantification. At all times, however, the Commission should not hide behind scientific uncertainty, but should confront it as systematically and judiciously as possible ... We do not expect this to be an easy task. Yet it is nothing novel to the administrative function or the legal process in general. (Hawaii Supreme Court: In re Water Use Permit Applications 94 Haw. 97 (2000) p. )

(d) Life Cycle Financial Impacts: People are ratepayers and taxpayers. Least cost is a regulatory approach that seeks to minimize ratepayer impacts without analyzing taxpayer impacts. People have two pockets. Minimizing what is taken out of one pocket while ignoring what is taken out of the other pocket makes no sense. By contrast, the Consumer Advocate analyzes ratepayer but not taxpayer impacts. (Q. "What would the taxpayer (as opposed to ratepayer) impacts be from using 100% biofuels?" A. "The Consumer Advocate does not possess the knowledge or expertise to this question." (DN 05-0145, Life of the Land Question, Consumer Advocate Response re LOL-CADT-IR-41) Q. "For each dollar that HECO would spend buying ethanol, how many dollars of taxpayer money is being used to subsidize the price of ethanol? This is a key question, as the Consumer Advocate, can you support unknown taxpayer expenditures to subsidize ratepayer rates?" A. "The Consumer Advocate does not possess the knowledge or expertise to this question." (DN 05-0145, Life of the Land Question, Consumer Advocate Response re LOL-CADT-IR-42))

Balance of Payments: Replacing imported fuel with indigenous fuel has an enormous positive impact on local jobs and on economic prosperity. Each dollar that enters Hawaii causes \$3-4 of local economic activity. Each dollar in Hawaii that leaves the state causes a decrease of \$3-4 in local economic activity.

**4) The effect of the pending order as to the applicant's interest;**

The continued use of fossil fuels, the rate of the shift to renewable energy, and the path taken significantly affects LOL and our members. Global Greenhouse gas emissions must be reduced. This docket may greatly impact the use of renewable energy but the devil is in the details. We need to *determine where we want to go, and whether this approach will get us there, instead of saying lets spend \$100M before determining where we want to go.* Given that we could have done this a decade ago, let us now not rush it so fast that we get it wrong.

**5) Other Means Available Wherein Applicant May Protect His Interest.**

There are no other means available to protect our interests.

**6) Other Parties Do Not Represent LOL's Interests.**

The existing parties will be the fossil fuel based utilities and the Consumer Advocate which traditionally protects consumers interests. In recent regulatory proceedings HECO and the Consumer Advocate have often taken identical positions which has the effect of minimizing options presented to the Commission. LOL represents environmental, social and holistic interests. For example, consumer and environmental issues are distinct, although they overlap. A minimal divergence is sufficient for separate representation. In most dockets that are or have recently been before the Commission, LOL's position has been significantly different from the Consumer Advocate. For example, we believe that Climate Change is a serious and immediate global crisis, while the Consumer Advocate has stated on the record that if global warming is real, any mitigation needed is decades away from needing regulatory action. We also have significant differences with regard to the use of life cycle analysis, analyzing both ratepayer and taxpayer impacts, balance of payment analysis, social impacts, environmental justice, the public trust doctrine, and the precautionary principle. A quick review of Dockets 05-0145 and 2007-0346 reveal deep rifts between the LOL and Consumer Advocate positions.

"Generally, community intervenors have been forced to rely on free legal and consulting services. Yet, they have infused us so-called 'experts' with new ideas. They have reminded us of the critical impact of essential utility services on life's basic necessities. With a modest funding source, these and other groups should be able to continue and enhance their role. Another situation where ... there are consumer groups with conflicting interests. At that point, our office is forced to select and advocate one position." Senate Bill No. 1918 (1997). Presentation of the Department of Commerce and Consumer Affairs to the Senate Committee on Commerce, Consumer Protection and Information Technology. Regular Session of 1997. February 10, 1997.

**7) LOL's Participation will Assist the Development of a Sound Evidentiary Record.**

We offer a unique perspective. We intend to present a proactive case, supported by expert witnesses and exhibits, which will provide to the Commission alternate scenarios. Our participation will enable the Commission to view and consider all of the pertinent available information needed to make a sound decision.

Life of the Land's Executive Director has a particular focus on energy policy, having represented the organization in a six year regulatory proceeding before the Board of Land and Natural Resources and sixteen (17) regulatory proceedings before the Hawai'i Public Utilities Commission. He has been described as an "energy wonk" (Honolulu Weekly, November 29, 2000) who "closely follows and participates in Hawai'i energy issues" (Environment Hawaii, September 2004).

Life of the Land's Executive Director produced Community Television shows re: (1) HPU's presentation of Stanford University Climatologist and Climate Nobel laureate Dr Stephen Schneider at St. Andrew's Priory; (2) the University of Hawai'i Richardson School of Law's Climate Teach-In; and (3) the Kickoff Meeting of the Hawai'i Power & Light: An interfaith religious response to global warming

Life of the Land's Executive Director served as a Peer Reviewer on a University of Hawai'i's Hawaii Natural Energy Institute report on Renewable Portfolio Standards report submitted or about to be submitted to the Hawai'i Public Utilities Commission.

The University of Hawai'i Richardson School of Law's Environmental Law Program participated in the 2007 Environmental Moot Court competition. The fictional lawsuit dealt with the Province of Inuksuk (in real life the northern 1/3 of Quebec) v. U.S. Coal Companies re Sea Level Rise and Coastal Destruction of their villages due to Climate Change. LOL's Executive Director and Assistant Executive Director served as US Appeal Court Judges in moot court practice sessions.

Life of the Land has sponsored dozens of witnesses in Hawai'i Public Utilities Commission regulatory proceedings including lawyers and Ph.D.s with specialized expertise.

As this instant docket was just filed, Life of the Land has not determined which witnesses to sponsor nor what documents to introduce. This is a reasonable approach. In fact, no party has publicly identified any witnesses they will sponsor in this docket.

**8) LOL's Participation Will Neither Unduly Broaden The Issues Nor Delay This Proceeding.**

Our comments, testimonies, expert witnesses and exhibits will be provided so as to strengthen the defensibility of the PUC decision. We do not seek to muddy the waters, but rather to bring clarity to the issues at hand. We have always accommodated the numerous time extensions requested by other Parties in the dockets that we are or have been in, but we have not delayed any docket based on a request by us to delay the proceedings. Allowing intervention by LOL, the filing of our comments and questions, and granting the other relief sought in this petition, the PUC will merely place LOL in the same substantive and procedural position as the other parties to these proceedings.

While we have gone along with time extensions proposed by the Consumer Advocate and HECO, we have never requested one on our behalf, nor have we ever approached the Consumer Advocate nor HECO about extending any docket.

We have never gone beyond the issues in any docket. In the biofuel supply contract (2007-0346) HECO accused us of doing this, but they misread Commission Order 24144 which clearly stated: "The commission finds that the issues proposed by LOL are subsumed within the broad issues listed in HECO and the Consumer Advocate's proposed issues." (page 6) Subsumed means contained within, as opposed to excluded from.

**9) LOL's Interests Differ From Those Of Those Of The General Public.**

The Consumer Advocate is bound by the law to represent the interests of the general public, that is, the consumers of utility services. Traditionally, they wait until all the facts are in before jumping to a conclusion. In this case, the Consumer Advocate has agreed to a unified position with the utility. There is nothing in the existing record that indicates that any of the issues that are of concern to Life of the Land - including those related to the environment, climate, justice, equity, and life cycle impacts - have been analyzed or will be represented by any other party.

**10) Whether the applicant's position is in support of or in opposition to the relief sought.**

Life of the Land supports policies which will decrease our use of fossil fuel and decrease our greenhouse gas emission footprint. This docket is complex. We agree in part with some of it and disagree in part with other parts of it, however, in the end, it is the details that will make the final policy wise or foolish.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy by hand delivery of the foregoing Motion to Intervene by Life of the Land, in PUC Docket Number 2008-0303, upon the following parties. I have hand delivered the original and 8 copies to the PUC, and sent electronic copies to the emails below representing the parties listed further below.

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Dated: January 20, 2009

  
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